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UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO IL 60610

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SEP 27 2005

In re Application of

**OFFICE OF PETITIONS**

Pawluczyk

: DECISION ON APPLICATION

Application No. 10/032,145

: FOR PATENT TERM

Filed: December 21, 2001

: ADJUSTMENT

Atty. Dkt. No.: 11298/4

:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)" filed June 27, 2005.

Applicants request that the Determination of Patent Term Adjustment be corrected from 413 days, as indicated on the Determination of Patent Term Adjustment mailed May 6, 2005, to an adjustment of 549 days.

The correct adjustment at the time of Notice of Allowance is 413 days. In accordance with 37 CFR 1.702(a)(1), an adjustment of 509 days can be attributed to the Office for failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed. The adjustment was reduced 96 days in accordance with 37 CFR 1.705(b) for applicant's failure to engage in reasonable efforts to conclude prosecution for the period of time in excess of three months taken to reply to the non-final Office action mailed July 14, 2004.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date.

Applicants are advised that a decision as to the period of adjustment under 37 CFR 1.703(b) is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within 3 years. See, 37 CFR 1.703(b).

Applicant is reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

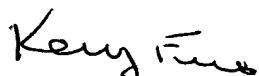
Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). See, also, *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

Applicant is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Accordingly, the period of patent term adjustment as of the date of mailing of the Notice of Allowance is 413 days.

The application file is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.



Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy